

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH & HUMAN SERVICES

Call to Order: By **CHAIRMAN DAVE LEWIS**, on January 23, 2001 at 8:00 A.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Dave Lewis, Chairman (R)
Sen. John Cobb, Vice Chairman (R)
Rep. Edith Clark (R)
Rep. Joey Jayne (D)
Sen. Mignon Waterman (D)

Members Excused: None.

Members Absent: None.

Staff Present: Robert V. Andersen, OBPP
Pat Gervais, Legislative Branch
Sydney Taber, Committee Secretary
Connie Welsh, OBPP

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: Disability Services Division -
Developmental Disabilities
HCFA Review, Olmstead, Waiting
List, Institutional
Population, Futures Study
Recommendation

Executive Action: None.

{Tape : 1; Side : A; Approx. Time Counter : 5.8 - 34.2}

Joe Mathews, Administrator of the Disability Services Division, began with a preliminary review of the programs involved and introduction of staff. He referred to a handout from the prior day's testimony **EXHIBIT(jhh18a01)**.

Maggie Bullock, Developmental Disabilities (DD) Program Director, explained: the work services program, which is a 24-hour, one-on-one intensive work service program; the facility-based work service, which involves production types of contracts and is less expensive than the intensive service; a combination of supportive work services and facility-based work programs; supported employment, which involves private contracting services to teach job skills; and senior programs, which involve individuals of retirement age in better use of their leisure time.

The Department provides developmentally disabled individuals with community and residential services in a home-like environment.

Ms. Bullock described the home services that the Department has for adults and children. There are 5 children's community homes, serving about 21 children. There are 44 intensive community homes around the state, providing intensive one-on-one staffing for medically fragile individuals or those with challenging behaviors and serving 300 adults. There are 26 adult community or standard group homes, which usually house a minimum of three people. There are five senior community homes for aging individuals. The supported living arrangement allows an individual to find a roommate. And finally, there are currently 240 people in community supports service, which is a service with an established dollar amount per person of \$7800.

Home-based family education and support services (FEMS) is an entitlement service for children from birth through three years of age and is funded through Part C of the Individuals with Disabilities Education Act (IDEA). These children's services are provided through seven contractors throughout the state. Family support provides training, support, assistance, and respite. Intensive needs services are provided to children who are Medicaid eligible with a mixture of Medicaid and general fund dollars. Oftentimes, home modifications and respite are provided, as well.

While case management service is not mandatory, it is essential in creating a system of individualized supports and is the only service that adults on the waiting list receive; it keeps them connected to the service system and enables them to get off the list.

{Tape : 1; Side : A; Approx. Time Counter : 34.2 - 37.8}

In response to a query from **CHAIRMAN LEWIS** regarding case management, **Ms. Bullock** stated that case management was always provided by the state through Child and Family Services and funded through Medicaid. While with Child and Family Services, some of the case management was contracted out, and that is how it has continued to this time. Despite this being the service

offered up for the 15% reduction, the Division considers it critical. There are four private non-profits providing case management in rural areas in addition to the state FTE which provide case management primarily in urban areas.

{Tape : 1; Side : A; Approx. Time Counter : 37.8 - 41.1}

SEN. WATERMAN asked if she were receiving target case management services and on the waiting list, how often would she have contact with a case manager. **Ms. Bullock** responded that she would have a contact a minimum of once, but usually four times a year. **SEN. WATERMAN** requested the cost per client for state funded targeted case management as compared to private provider case management and any information that definitively shows one system is better than the other.

{Tape : 1; Side : A; Approx. Time Counter : 41.1 - 46.2}

Ms. Bullock stated that if case management is removed it will contribute to the decimation of the system. As the system is changed to one of more individualized services, these people need this support in the community.

SEN. WATERMAN asked how much was spent in targeted case management. **Ms. Bullock** said that it is around \$5 million total.

{Tape : 1; Side : A; Approx. Time Counter : 46.2 - 51.2}

CHAIRMAN LEWIS asked why the Department identified this as an area to reduce if it is so critical. **Ms. Bullock** responded that it was very difficult for them to arrive at this, but that it was not an option to cut services, and case management is non-mandatory.

{Tape : 1; Side : A; Approx. Time Counter : 0.3 - 47.3}

SEN. WATERMAN asked if services are offered in case management, and **Ms. Bullock** replied that case managers function as advocates to the individual and assist individuals in writing the plan of care. **SEN. WATERMAN** asked if the only service the individuals receive is assistance in writing the plan of care, who provides the plan of care, or is it just a plan of what they will get when they get off the waiting list? **Ms. Bullock** replied that the provider community provides the services identified in the plan of care, and there may also be state Medicaid services in the plan of care. While individuals on the waiting list are not provided services, the case manager stays in touch with them and knows their needs should a slot open up. Case managers work with a total of 2,200 people, some of whom are on the waiting list.

SEN. WATERMAN asked if the providers could give case management would this create efficiency in this system? **Ms. Bullock** commented that the thing to be wary of is a conflict of interest

when a provider may attempt to influence the individual to buy all services from that provider.

Ms. Bullock went over the other services offered by DSD: transportation, adaptive equipment, evaluation and diagnosis service.

There are currently 729 adults on the waiting list; some may be receiving some services, but are waiting for other necessary services. There are 291 people on the waiting list receiving no services. The average time on the waiting list for those with no services is about two years, and the average for the remainder of those on the waiting list is about 3 years. **Ms. Bullock** stated that she believes that HCFA will cite the Department for this because HCFA says once there is a plan of care, individuals must receive services.

When waivers were first developed, HCFA did not provide much oversight. In 1992, the HCFA reviewed paperwork. When they came in 2000, Montana was the first state to be reviewed using the new quality assurance tool. **Ms. Bullock** went over the standards that HCFA used in the process. She discussed the initial findings: 1) the case management system is strong and supportive to the client, 2) the plans of care are based on the needs of the individuals, 3) the system's human and financial resources are too stretched, and 4) the Division is in violation of freedom of choice. **Ms. Bullock** reviewed the request for proposal (RFP) process used, which is at the heart of the problem with HCFA on freedom of choice; the system is too complicated with not enough qualified providers.

{Tape : 2; Side : A; Approx. Time Counter : 0.3 - 10.9}

Ms. Bullock continued that HCFA has issued a temporary moratorium on waiver services. As the result of unannounced visits to 15 of the 45 providers of direct services, the moratorium was lifted on all but 4 of the provider organizations. The moratorium was a hold on services; no one could be moved into the waiver, even if there were openings, until the problems were solved.

Because community supports is so different from the traditional services provided, HCFA requested that the Department write a new waiver, which it is doing. There are indications that this new waiver will be approved. The Department is continuing to work on the system to allow individualized services that allow self determination, flexibility, and portability for clients.

There was continued discussion of the issues involved.

{Tape : 2; Side : A; Approx. Time Counter : 10.9 - 47.8}

Mr. Mathews reviewed the Montana Vocational Rehabilitation program, which helps adults with disabilities get into full-time gainful employment in integrated work settings. This program has fairly stringent outcome measurements.

The Vocational Rehabilitation (Voc Rehab) program has offices around the state in major towns, but it also does itinerant work in every county of the state. There are five Native American projects funded directly by the federal government through five-year grants over which the Department has a partnership responsibility rather than oversight responsibility. These programs do the same thing the state federal program does but also provide specific services to eligible Native Americans on reservations to help them become employed.

The majority of the funding for this program comes from Section 110. The staff provides and purchases services for individuals with disabilities. It is an eligibility based program, not an entitlement. The Department provides vocational, on the job, or college training. The program is designed to the specific needs of the individual.

The Blind and Low Vision program has a vocational aspect, but there is also covers a major independent living component. There are orientation and mobility staff who train blind or low vision individuals how to get around in the community with cane or dog. There are also rehabilitation teachers who go into the home or workplace to teach blind or low vision individuals how to handle the everyday aspects of life. The theory behind this training of individuals is that there will be a reduction in nursing home costs. The staff also provides technical assistance for employers and job placement and development.

Since Voc Rehab is an eligibility program, people must have an established physical or mental disability causing a substantial impediment to employment in order to receive services. These services are those that would be needed for the individual to go to work.

The Department is measured carefully by the federal government, which does a program review every year. It checks documentation, outcome, and whether there is full involvement of the individual in development of the plan. In the last year, there were 985 disabled individuals that went into employment; around 70% were people with significant disabilities. The average wage at placement was \$8.16 per hour.

{Tape : 2; Side : B; Approx. Time Counter : 0.3 - 16}

Mr. Mathews discussed the ticket to work program. About 47% of Voc Rehab individuals that go to work receive some sort of

employer benefit, which is not much different than the regular population. Because individuals require these benefits, it can create problems when they are trying to place individuals. The annual earnings of these clients last year was \$12.2 million.

{Tape : 2; Side : B; Approx. Time Counter : 16 - 27.2}

SEN. WATERMAN questioned **Mr. Mathews** about the multi-system high risk children and how to get the flexibility in the system to serve these individuals appropriately. **Mr. Mathews** replied that individuals that look like they can go to work would be referred to Voc Rehab and if they are eligible, then the services are immediately provided. Right now an individual that is dually diagnosed with mental illness and severe developmental disability would be on a waiting list. This is a problem population. Those with brain injuries are in a different situation, in that if they are able to work or wish to work, then they can come into the Voc Rehab system and receive some essential services.

Mr. Mathews went over the Independent Living Services program. There are four independent living centers in Montana funded primarily with federal funds. These independent living centers work with people with disabilities to live independently. The individual may be unable to work, but needs help in everyday living assistance.

{Tape : 2; Side : B; Approx. Time Counter : 27.2 - 45.5}

Mr. Mathews reviewed Disability Determination Services, which is a state program that is an arm of the Social Security Administration and is 100% federally funded. It does adjudications for those applying for supplemental security income (SSI) or social security disability insurance (SSDI). This is the medical arm of social security and many of the Voc Rehab people go through this program. The work is reviewed by the social security administration and specific outcome measurements must be met. Montana's Disability Determination Unit has always received accolades from the federal government.

In response to Committee questions, **Michelle Thibodeau, Disability Determination Bureau**, stated that they do receive FAIM individuals and that the medical exams are paid for by social security. There was continued discussion of the issue of psychological and medical exams for these individuals. **Ms. Thibodeau** stated that there are private contractors that provide these services, but that it still comes out of this budget.

{Tape : 3; Side : A; Approx. Time Counter : 0.3 - 5.6}

In further discussion of whether the state is paying for medical and psychological exams for SSI eligibility and a contract that may or may not have existed, **Connie Welsh, Office of Budget and**

Program Planning, explained that the contract was \$125,000 in legal services to help with the SSI application process. **SEN. WATERMAN** asked for the numbers on how many make it after the second and third denials and how many of those individuals have legal representation. **Ms. Thibodeau** responded that 31% of those that come through the door are allowed; out of the remaining 67% that are denied 38% come back through the doors. About 8% of those denials are made eligible on the second level of appeal. On the third level of appeal, an individual may have a face-to-face hearing with a judge; 53% of denials are allowed by these administrative law judges.

CHAIRMAN LEWIS asked **Ms. Thibodeau** to get some information on this together for the Committee members.

{Tape : 3; Side : A; Approx. Time Counter : 5.6 - 7.0}

SEN. COBB asked if more FAIM participants have been put on SSI in the past few years. **Ms. Thibodeau** responded that most of those that are on the rolls cannot work; most of those on FAIM that should be on SSI already are.

Ms. Thibodeau explained that SSI is supplemental income for people who are blind, aged, and disabled, and SSDI is the trust fund paid into by all employed individuals. The same criteria are used to establish medical disability. Those who pay into the disability insurance system can draw out income and receive Medicare.

Mr. Mathews continued with the presentation on the Disability Determination Bureau. There are more applications and cases adjudicated than there have been in the past. They are doing continuing disability reviews to keep track of improvements in condition of the individuals in the program.

Ms. Thibodeau touched on the social security streamlining process involved in eligibility determination.

{Tape : 3; Side : A; Approx. Time Counter : 16.6 - 45.4}

Mr. Mathews began his overview on the Montana Developmental Center (MDC) in Boulder, which is licensed by HCFA as an intermediate care facility for persons with mental retardation (ICF/MR). HCFA does unannounced annual reviews and interviews staff, clients, and advocates. It reviews the staff to client ratios, active treatment, and file reviews.

Mr. Mathews went over the Developmental Disabilities Division budget projections for the 2003 biennium. The driving philosophy is to move individuals into community-based services. **SEN. WATERMAN** asked if the budget figures included all costs including

electricity and the bond. **Mr. Mathews** said that it excludes the bond payment of about \$1 million per year. The average cost per client is \$144,000 per year **EXHIBIT(jhh18a02)**.

MDC has a mixed adult population with varied behaviors and treatment needs. These individuals may pose severe behavioral challenges and could be dangerous to themselves or others; they may be medically fragile; and they may exhibit predatory behavior. The facility is licensed for 87 beds and of those 10 to 15 individuals have predatory behaviors. Courts can petition people into the system. The commitment process has not changed, but it has heightened over the last several years.

{Tape : 3; Side : A; Approx. Time Counter : 45.4 - 51.1}

SEN. WATERMAN mentioned that the Board of Visitors had been quite critical of the facility and asked **Mr. Mathews** to address that criticism. **Mr. Mathews** explained that the main problem is that they do receive the different populations of the vulnerable and the predatory.

Jeff Sturm, Superintendent of Montana Developmental Center, went over the issues concerning the Board of Visitors. Those were primarily treatment issues with the offender and psychiatric population, and MDC has contracted with a psychiatrist to provide more care for the dually diagnosed.

{Tape : 3; Side : B; Approx. Time Counter : 0.3 - 38.1}

Mr. Sturm continued with his discussion on the issues at MDC. The traditional population is medically fragile with some behavioral problems with a need for almost one-on-one care. The new populations contain clients with sexual offense histories and severe behavioral problems from whom the vulnerable clients and the public need to be protected. There is a shift into a forensic clientele at this facility, and they have been reviewing the policies so that they conform more to the clientele that currently exists within the facility. They have also been reviewing the staffing policies since there are so many different needs in the facility.

SEN. WATERMAN stated that there is a view that these facilities should be seen as crisis hospitals where clients would stay for a year until they are stable, with the view toward placing them into the community. She asked **Mr. Sturm** if he saw that as a possibility given the population that exists there now. **Mr. Sturm** said that he does view the facility as a transitional place with a mission to prepare people for community living, but he is unsure that some of those clients can be placed into the community given the problematic behaviors.

Mr. Mathews continued with an overview of Eastmont Human Services Center in Glendive, which is the other state residential facility that is licensed as an ICF/MR by HCFA. Much of what applies to MDC also applies here. Both residential facilities are funded with 100% general fund up front and reimbursed through Medicaid. The reimbursement runs 70%-30%.

Eastmont provides services to 32 adults with significant developmental disabilities; most are non-verbal requiring near total care. As the population has been moved out, Eastmont has been downsized. The staff has been reduced, and one of the cottages will be closed. The referral process here is the same as at MDC.

In response to question from **REP. JAYNE**, **Mr. Mathews** said that he views Olmstead as meaning that the Department should make greater efforts to move individuals from the institution to community services before looking at individuals on the waiting lists for those services. Closing one cottage would eliminate 10.6 FTE.

The Developmental Disabilities Planning and Advisory Council (DDPAC) has been an invaluable assistance to the Department in planning and advocacy. It works to train people to act as advocates for themselves and for others. There is also a respite program that it has been involved in. These programs were funded through federal grants. DDPAC also works on employment for people with developmental disabilities.

{Tape : 3; Side : B; Approx. Time Counter : 38.1 - 48.5}

Mr. Mathews reviewed the Travis D lawsuit in which individuals who are in segregated lawsuits could be moved into the community, but are not. The judge put the case on hold until Olmstead and Garrett were decided. The Department is working on the best way to settle it. This particular lawsuit is about developmental disabilities, but there will probably be action in other situations such as nursing homes and mental illness.

SEN. WATERMAN asked about the time frame in settling the issue.

Mr. Mathews stated that there is not adequate infrastructure to move these individuals into community settings, and the Department has made a concerted effort to target this and expand the movement of people out.

{Tape : 4; Side : A; Approx. Time Counter : 0.3 - 24}

Mr. Mathews continued that he feels that the Division is making progress in this issue. **REP. JAYNE** asked how the Attorney General's office is involved in this. **Mr. Mathews** said that they are the lead on the lawsuit, and that the Department pays for their services.

SEN. WATERMAN asked **Mr. Mathews** to provide the Committee with the 1993 study that was done for Governor Racicot with recommended allocations.

Mr. Mathews briefly reviewed the Olmstead and how the Department should go about dealing with this since he feels that the improvement of the infrastructure needs appropriate funding.

In response to a question from **SEN. COBB** regarding what they would do if they were told to close Eastmont, **Mr. Mathews** said that they would determine the needs of individuals and locate providers that could provide for those needs, and then develop a plan.

SEN. WATERMAN suggested that it may take a different category of providers to provide the services. She then asked how long the Olmstead planning committee would take to develop its plan and requested a copy. **Mr. Mathews** said that he hoped to have this ready by the end of spring for the next fiscal year.

In response to questions from **REP. JAYNE** whether there is talk of closing Eastmont, **SEN. WATERMAN** said that there was a recommendation from Governor Racicot in 1993 to close the facility. Since then there has been continued discussion about the closure of the facility and whether there is the need for two facilities. **REP. JAYNE** asked why they don't just move the people now, if they would eventually do it anyway. **Mr. Mathews** responded that the infrastructure requires preparation which will take some time. **SEN. WATERMAN** requested an estimate of the costs to make the move of the difficult cases into the community from **Mr. Mathews**. He responded that he would get that to her.

A memo from **SEN. KEENAN** was distributed **EXHIBIT(jhh18a03)**.

ADJOURNMENT

Adjournment: 11:55 A.M.

REP. DAVE LEWIS, Chairman

SYDNEY TABER, Secretary

DL/ST

EXHIBIT (jhh18aad)